State of South Carolina

Office of the Governor

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June 2, 2009

The Honorable André Bauer
President of the Senate
State House, First Floor, East Wing
Columbia, South Carolina 29201

Dear Mr. President and Members of the Senate:

I am vetoing and returning without my approval S. 116, R. 55. This bill is identical to S. 401, which we vetoed and the House of Representatives sustained last year.

This bill, which gives a vendor preference in the state procurement code, is well intentioned. There is nothing seemingly more unfair to South Carolina taxpayers than their government retaining services from an out-of-state firm while local firms are somehow disadvantaged in the reverse. Despite these good intentions, this bill would create greater problems for both taxpayers and private firms down the road. Our thinking is as follows:

First, we do not believe it is the role of government to be in the business of picking winners and losers in the commercial marketplace. This bill does. Rather than erecting barriers that prevent whoever has the best price and best service to win business, procurement, it would seem to us, ought to be about getting the best value in service and price for the money. There is a manifold list of well-intended economic ideas like this one that is as harmful to the economy as the price support system that has existed for years in sugar and some other agricultural products.

Second, we believe it is the private sector's job to create jobs and government's job is to most efficiently offer its services to its people – rather than go into the jobs creation program by way of erecting barriers. This bill is eerily reminiscent of the procurement preferences for union labor and domestic products that the Obama administration and Congress included in this year's federal stimulus act. Accordingly, we are using this message to remind the more than a third in the House and Senate that have opposed the stimulus act on the grounds that the private sector is better than the government at stimulating the economy, and we encourage them to stand by this principle by sustaining this veto.

Third, this will make the cost of government more expensive by requiring the state to purchase goods and services at less than competitive rates. According to the State Budget Office's fiscal impact statement, this would mean the state could pay up to 10 percent more on some government contracts. The Budget Office estimated that existing vendor preferences in the procurement code have already cost the state $1.37 million, which is why we recommended in our Executive Budget eliminating all vendor preferences in the state procurement code.

Legislation like this, though popular in the political season, does nothing to reduce government's cost to the average taxpayer. In that regard, some would say this legislation typifies the view that government can afford to remain inefficient and uncompetitive simply because it is the government. The present legislation is especially troubling at a time when government will be bringing in less revenue than in recent years. In the face of diminishing revenue, we should be looking for ways to cut the costs of government rather than inflate them.

Fourth, we also have doubts about the bill's constitutionality. The Privileges and Immunities Clause of the United States Constitution prohibits the state from arbitrarily denying rights – including the right to do business – to out-of-state residents. This legislation appears to violate this clause by discriminating against out-of-state employers and employees by making them less competitive in providing goods and services through government contracts. This legislation is similar to the local government ordinances regarding employment practices of government contractors struck down by the U.S. Supreme Court in *United Building & Construction Trades Council v. City of Camden.*

For these reasons, I am vetoing and returning without my signature S. 116, R. 55.

Sincerely,

Mark Sanford